

See the Advertisement at the end of this

Rep. of the

THE

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Trade of **BRITAIN** stated;

By Dr. F.

BEING

The Substance of two Papers published in London

On Occasion of the

Importation of Wine and Brandy

FROM

North-Britain.

I know it is expected, I should say something to the Substance of this Question, viz. That the Union cannot be broken——. And what do you mean by that now, says one, if the Parliament had pass'd the Draw-back Bill, had not the Union been broken? Did it not strike at the Life and Soul of the Treaty, and directly infringe the fourth Article about a free Intercourse of Trade?

This is an ensnaring Question, and I know very well the design of the Enquirers, if possible, to draw us into the Scandal of pleading for the Encroachments some Men wish to be made upon the Union, after it has so long been pleading for the Benefits of the Union.

Well Gentlemen, however, I will speak my Mind frankly. I have laid it down as a general Thesis, that no Act of Parliament, however contravening the Treaty, or inconsistent with it, could have broke the Union—— I have but one Explanation, to add to that Head, viz. To lay down what I mean, by breaking the Union, and I'll be short enough in that; By breaking I mean dissolving it, breaking it up, disengaging the Nations from the Obligations of it, and making it lawful for them to return to their respective former

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mer Constitutions; and tho' this seems not immediatly to be meant in the present Clamours, yet I begin there, because I know perhaps more of the Drift and Design of some People in these things, than is known every where, and hear more than every Body hears, of what Use is made of these things in the Argument, by the Enemies of the Union.

I think it proper therefore to anticipate the wicked Design, by making it evident, that the Treaty is established on too sure a Foundation for any Power yet formed on Earth to dissol ve or destroy; and as this is very necessary to set right the Judgments of a great many, who are amus'd at the Clamours and Arguments of those that are every moment raising scruples; so those who are better inform'd, ought to bear with what instructs others, tho it be useless to themselves.

But what is to be said to the Draw-back Bill?

In general I must say, 'tis very hard, for *English Britain*, that it should not pass, and it would have been very hard for *Scots Britain*, if it had, I mean without Amendments; and I heartily wish some *medium* had been found out.

I have already explain'd my self as to the Wine and Brandy, that I think, the Clamour rais'd by the Merchants, has had a great deal of Management in it----- And that very Clamour has really been more Damage to Trade, than the Subject could give Reason for; my Meaning is this, That had all the Wine and Brandy imported upon this Occasion into *Scotland*, been sent directly into *England*, without Noise and Distraction, it had not been sufficient to have made any fall of Prices, or stop of Trade, and consequently the Evil might have been born with; but 'tis the Clamour, the Noise, and the Artifice made use of without doors, has done the Damage to Trade. and the Union is no way concern'd in that.

But after all, I do not say, it was no injury to *England*, GOD forbid I should either be so partial, or so unjust, and I'll state the just Distinction as short as I can.

I always said, it was a hardship upon *England*, both upon the QUEEN as to her Revenue, and upon the fair trading Merchant, and in that it was which I applauded, and justly too, the Honour and Generosity of the QUEEN and House of Lords in rejecting the Bill; rather choosing to bear the Inconvenience, than make our *Northern Brethren* uneasy.

But this did no way argue, that it was no Damage to *England*, no nor that it was not a very grievous Burthen, and when I say, bear it, as I would still say, if I were to proceed to particulars, I think it does not at all argue but they were in the right, who endeavour'd to find out a *medium*, that is, redress the Mischief, and yet not wound the Union----- Whether the *medium* propos'd was sufficient or no, is none of my business to determine.

Had the House of Commons pass'd an Act universally to stop the Importation from *Sassland*, without distinction or Reserve, for the Subjects of *Scotland*, I cannot

not

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not help saying it had been in my Opinion a Contravention of the fourth Article, of the Union, *Thos far from Dissolving it as before*; and 'tis a doubt with me, whether it had been a legal Act, whether it could have pass'd, or had it been pass'd could have been obligatory to *Britain*; but that I leave undetermined.

But that *England* had a great deal of Reason, *if possible, and with Safety to the Union it could be done*, to prevent the intolerable Frauds practis'd upon her, under the shelter of the Union, I can by no means doubt; and I think 'tis very necessary to enter into the particulars of those Frauds, that all the world may determine, whether there is reason for this Matter or not, and the Right distinguishing on this Head will shorten our Dispute, and bring us to some better Understanding among ourselves.

I believe, no Man in the prospect of of the Treaty ever expected or desir'd, that taking Advantage of a casual Interval between the End of one Constitution and the Beginning of another, *Strangers, for such the English were as well as the Dutch in the Case before us*, should come in with their Stocks, and with their Tricks too, to evade the Law, defraud the *English Government*, and invade the Course of Trade.

I'll do *Scotland* that Justice, they had no View of it, nor took any Steps towards it, nor do they now approve of it, or in general are Gainers by it.

That the Advance upon their own Goods might be in their View, is no Cheque to our Argument; it was to be expected it was their due, and it would never have been disputed them, and it was both foreseen, and not disputed: But that the whole Chain of Mischiefs which have follow'd, should be practis'd, and the cheats of Trade shelter'd under the Wings of the Treaty, I assure you Gentlemen, as it was never foreseen, so it was not intended by the *Scots*, nor are they at all pleas'd with the Attempt to make them the Tools of so notorious a Fraud, or at all accessary to it, or will be at all concern'd at any lawful Restraint to be put upon it.

The Out-cry therefore, which is politickly rais'd, that the Stop of *French Wines, Brandys, &c.* from *Scotland* will encroach upon the Union, is as politickly carry'd on, 'tis thrown upon the *Scots* without any ground, and they will at any time make it appear they are clear of it; for give them but the free Liberty of their own Propertie, and the uninterrupted Intercourse of Trade according to the 4th Article, I dare say upon all Occasions, they will renounce the having any hand in the sheltering the Frauds and clandestine Trade of other People, and also clear themselves of having any hand in them.

Nor do I speak this by suggestion barely, but as I am daily conversant with the People I am speaking of, and have it directly from their own Mouths; I hear them every day detesting the Frauds put upon the Government, under the Shadow and Protection of the Union, they are every day protesting they are clear, so much as of any Design to have the Treaty so improved, to the Damage of the publick, and the Loss of the fair Trade; and they think themselves in

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jur'd

jur'd, &c.) in being slander'd, with being the Contrivers and Abettors of such unfair, unjust and dishonest a Use, as is made of that Advantage by others, the Blame of which by common Fame seems to lie at their Door, whereas generally speaking they have no hand in it. (2.) They are injur'd in having the general Trade of *Britain*, of which they are now Sharers, and for which they are equally concern'd, injur'd by clandestine unfair Trading. (3.) To have the End and Original Design of the free Intercourse of Trade capitulated for in the Union, and mention'd in the 4th. Article of the Treaty, debauch'd from its true Original, viz. The Encouragement of *Scots Men* in improving, encreasing and advancing Commerce, and their Nation by it, into a Cover and Shelter for some of the worst Frauds that can be committed in Trade.

Upon the whole therefore I am clear in this; give the Subjects of *North-Britain* a free Communication; a free Intercourse of Trade to the Ports, &c. of *South-Britain*; and in this particular of the new import of *French Goods*, declare all their Goods, truly and bona fide, their own, and that have paid legal Customs, free to be imported, and whatever legal Restraints are put upon others, the *Scots* will immediatly declare themselves unconcern'd, and very well pleas'd, since they never design'd the Union to be a shelter to Fraud, under the colour of their Advantage.

I think I am oblig'd to clear *Scotland* or *Scottish Britain* from acting in, or defending the Frauds which we complain of, and I think nothing can more readily do it, than by showing, which in all my Acquaintance among them is general, that they disown any hand in it, and reserving a Liberty of their own Properties, will be very well pleas'd to see *England* have justice in the rest.

I acknowledge, that this Paper insisting so much upon Frauds and Cheats put upon the QUEEN and the Government, and upon Trade in general in the *South*, by virtue of this Importation, it seems natural to examine what they are; and how far I can call them Frauds, and my Reasons why I would have them suppress'd now, when I lessen'd them, and cry'd out to have them born with before.

I shall not fail to stop this Gap of Clamour, and by as near as I can, making proper Distinctions here, separate the clean and unclean; and see how far on one hand the *North* should not be restrain'd, or on the other the *South* be impos'd upon; and I make no Question to reconcile all these things together, and if I do, it will not appear so strange a thing as some would have it be thought; that Her Majesty should mention it in Her Speech to the Parliament, that the QUEEN should recommend it to them to prevent the Inconveniences of it, or that the Parliament should bring in a Bill to prevent them.

Upon the declaring the Union, and that it should take Effect the 1st of May, it was presently visible to all the World, that the *Scots* being to enjoy a free Intercourse of Trade, with the *South* of *Britain*, all Goods imported into *Scotland*, before the said 1st of May, and paying the lawful Customs or Excises demand'd there, fairly entred and discharged, should from thenceforth, without any other,

other Demand, Hindrance or Molestation, be freely admitted into all the Ports of *England*; and of this I have given an Historical Narration already.

'Tis without all Dispute, that the true Intent and Meaning, and the only true Intent and Meaning of this Article was, that the Subjects or Natives of the *North Part of Britain* should have a free Admission into all the Parts of the *South*, without any Payment, Taxation or Imposition, other than what they Paid themselves: Or, to put this into directer Terms---- That the Trade of *North Britain* should be entirely free in all Respects, as that of the *South*---- And the Word *free Intercourse* implies the very thing I am upon.

Now I must confess, tho' I have been pressing *England* to bear the Inconveniences, yet I dare not say, that because the literal Sence of this Article does give the *South* Part a Disadvantage, that therefore the Intent of the Law, and the true Design of the Legislators on both sides, shall not at all be regarded---- In the Course of our Law, we have a common Distinction of Right; there is a legal Right, and an equitable Right; common Law decides the first, Chancery, *which in English Acceptation is Conscience*, decides the last; where the Letter of the Law will in strictness of its Observation out-stretch the Intent of the Law, Conscience governs, and is a Regulation put upon legal Severity; this is that Severity, which is the Foundation of a known Maxim, *Summum Jus Summa injuria*, and in the Course of Subordination, this Court of Conscience is always superiour, and the equitable Right shall at all times over-rule the legal.

I apply the Case thus---- 'Tis true by the Letter of the Law, the *Scots* are to enjoy a full and free Intercourse of Trade, that and literal Expression of a free & full Intercourse of Trade, between the Kingdoms, may, and I believe does, literally include, that all Goods legally imported into either, shall be freely admitted into the other, let the Importers be who they will.

But now, Gentlemen, shall the QUEEN have no Equity? shall the Government have no Redress against Injury, where the Letter & the Intention of the Law seems to be strained one against another? Shall there be no Court of Conscience erected between the Nations, in a thing that 'ts evident one side is injur'd in, and the other do not defend?---- Shall the Union be stretch'd by designing Knaves, and shall honest Men be bound to protect them in it? This is a very hard Case, and I think with Submission, leaves very great Reason for the Debate to have been brought into Parliament; of which hereafter.

But I come to the Frauds.

1. The Importation of Wine and Brandy, and other Goods, prohibited, or on which high Duties are payable in *England* by Persons not at all Subjects of *Scotland*, or concern'd before with the *Scots* Trade, and only with Design to transport those Goods into *England*, and so defraud the Government there of those high Duties, and put Money into their own Pockets. This is one of the Frauds.

Will any Man say, that this had its Foundation in the Intent and Meaning of

of the Law, and that it was so design'd on either the *English* or *Scots* Side; that it was designed by the *English*, that *England* should thus be injur'd by her own Subjects, under the Colour and Cover of the *Scots* free Intercourse; that it was design'd by *Scotland*, that the Foreigners should, by the Advantage of the 4th Article, come and bring foreign Goods into *Scotland*, on purpose to cheat the *English* Government of the Customs?

If then this was not in the Intent and Meaning of the Union, where is the Fracture of the Treaty? If the *Scots* Freedom and Intercourse of Trade being preserv'd, Laws were made in *England* to restrain and prevent those Frauds of other People, who taking Advantage of the Letter of the Treaty, imposed upon both Kingdoms, contrary to the true Intent and Meaning of the Union in general.

This Way of Arguing is, I think, so just a Vindication of the Reasonableness of Her Majesty's Speech to the Parliament — Moving them to consider *how in the best Manner possible to prevent the Inconveniences arising to the Trade of England by the Interval between that Time and the 1st of May*; and of all the H. of Commons did afterward, that I think, I need say no more at all to it.

Nor does this at all enter into the different Sentiments of either House, or do I lessen the Justice of one House, by applauding the Generosity of the other, and therefore stating this Matter right, reconciles it all.

The QUEEN, moved by the Complaints of the Merchants, alarm'd at the Rumour, *however politickly rais'd*, of the vast Importations into *Scotland*, and the horrid Practices about Draw-backs, gives the Houses a Recess, and calls them together again to see, if possible, the evil might have a Remedy; *That is, to see if it might have a LEGAL REMEDY*, not to prompt the Houses to make Infractions into the Union, 'ts very Plain, that could not be the Design.

The H. of C—s first vote the Grievance; *That it is ruinous to the fair Trader, prejudicial to the QUEEN's Revenue, and destructive to the Trade of the Kingdom, or to that purpose*; for at this Distance I have not the Votes.

To remedy it, and yet preserve the Union too, they observe, the true Intent and Meaning of the 4th Article was to give a free Intercourse of Trade to *Scotland*, and accordingly they add a saving Clause for the *Scots*, and then Enact against the other. — Here was no Manner of Injustice design'd, but the equitable Part of the Law considered, and a Distinction made between the Letter of the Law, and the true Intent and Meaning of it.

The House of Lords, and therein I include also the QUEEN, tho' it did not personally and parliamentarily come before Her Majesty, taking this Method into their Consideration — They first own the Equity and Reasonableness of the Thing, and send for the Judges to be farther satisfied, if it might correspond with, or receive no Inconvenience from the Union; the Judges declining their Opinion, and the Matter seeming doubtful, the Lords, in meer Generosity and Tenderneſs to the *Scots*, throw it out, choosing to leave *England* to struggle as well

well as she could with the Damage sustain'd, than give the *Scots* the least Shadow of Distrust, that in doubtful Cases it should be given against them, or that to save our selves, we should venture to clash with the Treaty; and this I have been large upon already.

But pray take this with you, Gentlemen, that the Lords did by no means in this Proceeding grant, that these Things were just, that it was no Injury to *England*, no Fraud, no using the Union to an End it was on neither side design'd for; they highly approv'd of this, that it was every thing the *Commons* had Voted it to be, and that if it could with safety to the Union, it ought to be prevented, only they would not tread on the Brink of the Treaty, nor do the least Thing, tho' just and in its Nature reasonable, that should give any Jealousie to the *Scots* of their being disregarded, or the Treaty being invaded.

Thus far I think, the Proceedings on both sides have been just, and I do not hear, I confess, so much Clamour at the Proceedings of the H. of C. — in the *North*, as I do from the *South*, which I take to proceed from this; that the Persons, who have committed the Frauds, live in the *South*, and 'tis natural to hear the Noise from that Part which feels the Smart.

If there has been any Complaint in the *North*, it proceeds from their Fears, and those Fears are put into their Heads too, by false Reports, and malicious Spreaders of Forgeries & Suggestions; that their Intercourse of Trade, literally theirs, shall be stop't by the *English* — Pray, Gentlemen, mark it, I say again, the *Scotts* make no Complaint of your taking all just Methods to restrain the Frauds in Trade above-mentioned, they freely leave it to you, to do as your own Law will direct; they are not concerned what Tricks your Lawyers find out to prevent the foreign Importations, — but 'tis stopping their own Trade, their immediate free Intercourse, and preventing the Import of the true and fair Effects of their own Property in Trade, which they are alarm'd at, and which the busy and projecting Enemies of the publick Peace perswade them you will do; this is their Grievance, and this the Case in hand as to them. — For your own People, if the Law will pinch them, they say, do it with all their Hearts.

I am now speaking the Reason and Nature of the Thing, not my own private Opinion, I shall give you that after, as I have frankly done before, nor will I debate here the Authority, the very Letter of the Treaty ought to obtain, or whether it were not to be wish'd, the Grievance was not so great, but it might be born with; that all Murmur and Complaint, however ill grounded, should be taken away on either side: But I confess the Disease is a great one, and the Cure very needful, and the Endeavours to cure it legally are so much the more justifiable.

And yet I am still as I was ever of Opinion, the Grievance in the particular Article of Wine and Brandy is, as I said before, a mere Trifle compared to the Clamour has been rais'd upon it; and were there no other Grievance in it, were the Customs of those two Articles, all that is to be complain'd of, I should

should still say, BEAR IT, to remove all the Noise and Clamour, that the Enemies of the Union make about it.

If I am inform'd right, and I believe I am, discounting the ordinary Expence of Wine and Brandy here in the North, where I assure you, Gentlemen, the good People drink very heartily; and where the Nobility and Gentry have laid in great Stores of Clarret, some a Tun, some two, some three Tun of Clarret, and a Proportion of Brandy; discounting this and the common Draft, I am clear in it, and have seen some of very good Judgment here concur with my Opinion, there cannot be 800 Tun of Wine spared there to go for England; and a great Deal of that is a small thin Sort of Wine, which will not suit the English Market, or bear a Price encouraging the Export; By the same Calculation, I allow, about 1200 Tun of Brandy may be sent into England; now if the whole of both Sorts, that is brought in, and that can be spared, should be admitted into England, let it belong to whom it will, I am perswaded, it would not be worth the Clamour rais'd about it.

But the Grievance is not all here, I shall enter into the other part of it in my next, and so close this Matter.

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